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10 CHEVEZ and DEPUTY LAWRENCE SWANSON, JR.

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

|    |                                  |   |  |
|----|----------------------------------|---|--|
| 14 | N.G. AND L.G., minors, by and    | ) | CASE NO. CV13-008312-SVW(FFMx)               |
| 15 | through their Guardian ad Litem, | ) | <i>[Assigned to Judge Stephen V. Wilson,</i> |
| 16 | Lilliana Magallon; SARA PEREZ,   | ) | <i>Courtroom 6]</i>                          |
| 17 |                                  | ) |  |
| 18 | Plaintiffs,                      | ) | <b>OPPOSITION TO PLAINTIFFS'</b>             |
| 19 |                                  | ) | <b>MOTION IN LIMINE NO. 1 RE:</b>            |
| 20 | vs.                              | ) | <b>EXCLUDE DECEDENT'S TATTOOS</b>            |
| 21 |                                  | ) |  |
| 22 | COUNTY OF LOS ANGELES;           | ) | <b>PRETRIAL CONF: July 28, 2014</b>          |
| 23 | LEROY BACA, DEPUTIES DAVID       | ) | <b>TIME: 3:00 p.m.</b>                       |
| 24 | CHEVEZ and LAWRENCE              | ) | <b>COURTROOM: 6</b>                          |
| 25 | SWANSON, JR.; GOMEZ, KELLY-      | ) |  |
| 26 | EKLUND, AND DOES 5 – 10,         | ) | <b>Trial Date: August 12, 2014</b>           |
| 27 |                                  | ) |  |
| 28 | Defendants.                      | ) |  |
|    |                                  | ) |  |
|    |                                  | ) |  |

29 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

30 Defendants COUNTY OF LOS ANGELES, DEPUTY DAVID CHEVEZ,  
31 DEPUTY LAWRENCE SWANSON, JR. (collectively "Defendants") submit this

1 opposition to Plaintiffs N.G. AND L.G., minors, by and through their Guardian ad  
 2 Litem Lilliana Magallon and SARA PEREZ' ("Plaintiffs") Motion in Limine No. 1 to  
 3 exclude decedent's tattoos.

# I.

## INTRODUCTION

6 On October 18, 2012, Deputies Lawrence Swanson and David Chevez  
 7 accompanied arrestee Jilberto Gutierrez from a Los Angeles County Sheriff's  
 8 Department (LASD) station jail to the Centinela Hospital Emergency Room. Earlier  
 9 in the afternoon Gutierrez had been arrested—not in a traffic stop, as Plaintiffs  
 10 claim—but for being a felon in possession of methamphetamine. He had a seizure-  
 11 like episode while at the station jail, and was taken to the ER.

12 Gutierrez indicated to the nursing staff that he had used methamphetamine in  
 13 within the last two days. Dr. Arnold Sin examined him and ordered an EKG and x-  
 14 rays. Gutierrez refused the tests. The deputies unhandcuffed Gutierrez' dominant  
 15 right hand so he could sign an acknowledgment that he was being discharged back to  
 16 jail against medical advice.

17 As the deputies readied to return him to the station jail, Gutierrez—who had  
 18 been calm and quiet to that point—suddenly reached out with his free hand, grabbed  
 19 Dep. Swanson's Beretta handgun, and violently attempted to wrest it from the  
 20 holster. The deputies struggled with Gutierrez to prevent him from removing the gun.  
 21 Swanson pressed down on Gutierrez' hand to keep the gun holstered, while Chevez  
 22 used fists, and then baton strikes to the head to force Gutierrez to release the gun.  
 23 Despite sustaining repeated strikes to his head, Gutierrez did not let go. Swanson  
 24 then used his left hand to deploy pepper spray and was able to break Gutierrez' grip  
 25 from the gun. Gutierrez then leapt to his feet, pulling the gurney away from the wall,  
 26 and lunged for the gun with his free right hand, at which time Deputy Chevez shot  
 27 him once to prevent Gutierrez from disarming Deputy Swanson, from harming the  
 28 deputies, and from escaping and harming other people in the hospital.

1           Jilberto Gutierrez was a gang member and had a number of gang-related  
 2 tattoos establishing his affiliation with a gang and commitment to gang tenets as  
 3 admitted to by Lilliana Magallon, plaintiffs' Guardian ad Litem and former girlfriend  
 4 of decedent. These tattoos are not only relevant, they are party admission and  
 5 statements against interest inscribed on decedent's own body. When he attempted to  
 6 wrest away the deputy's gun, he used a gun take-away and deploy technique  
 7 commonly known among gang members and taught in prison. Decl. Dunkerly, ¶ 5.  
 8 His tattoos are evidence of his gang membership which is probative of his bias,  
 9 motive, plan, and opportunity to learn this gun take-away technique within the  
 10 meaning of FRE 803(3). Further, Plaintiffs claim damages for loss of support as  
 11 compensatory damages. Gutierrez' gang affiliation is evidence related to his  
 12 employability as well as determining what income-dependent damages, if any, are  
 13 actually recoverable.

14           Lastly, it is not practicable to retouch the photographs of the hospital room and  
 15 decedent's body to redact the tattoos while leaving the blood spatter evidence  
 16 undisturbed. The distribution of the blood spatter is a critical component of the  
 17 Defendants' reconstruction analysis. The blood spatter and other contusions appear  
 18 on the decedent's arms, hands, shins and socks. There is also contusion on his left  
 19 ribcage that is consistent with a pressure wound from the rail of the gurney caused  
 20 during the struggle for Dep. Swanson's gun. The only photograph of that contusion  
 21 is a coroner's autopsy photograph in which decedent's body is fully disrobed,  
 22 showing his various tattoos.

23           Notwithstanding that they seek the tattoos and gang-evidence excluded,  
 24 Plaintiffs' counsel reserves the right to discuss tattoos to the extent that doing so  
 25 would benefit their unsupported theory that the Deputies saw a tattoo on Gutierrez'  
 26 chest that read "FUCK PIGS" and despite being sworn officers of the law, thereupon  
 27 supposedly became so incensed that they decided to "execute" him in a public  
 28 hospital with other persons in the room. This is plaintiffs' counsel attempt to

1 manufacture a sensationalized theory to inflame the passions of the jury without  
 2 adequate evidence. For example, Gutierrez' torso was covered by a t-shirt and the  
 3 deputies testified that they did not know what was tattooed on his chest and back.  
 4 Defendants oppose Plaintiffs motion to exclude some tattoos and include others as  
 5 each benefits or hurts their trial strategy. There is nothing overtly prejudicial about  
 6 decedent's gang related tattoos and any prejudice is outweighed by the probative  
 7 value of decedent's gang affiliation. These tattoos paint the full portrait of what  
 8 motivations animated the decedent, the tenets of his beliefs, and his general  
 9 relationship with law enforcement.

## 10 II.

### 11 **DECEDENT'S PROVEN MEMBERSHIP IN A GANG IS RELEVANT TO** 12 **OPPORTUNITY, BIAS AND DAMAGES**

#### 13 **1. Decedent's tattoos show his gang affiliation which is probative of his** 14 **opportunity to learn a gang-taught gun take-away technique and his bias.**

15 Defendants are informed and believe that the Plaintiffs are going to attempt to  
 16 paint this incident as an "execution style" use of force against Jilberto Gutierrez in a  
 17 hospital room with other persons present. In order for the jury to have a complete  
 18 picture of what happened, it is crucial to a full and fair trial that the personality and  
 19 bias of Gutierrez be brought into evidence. The decedent was a member of a gang; he  
 20 had gang tattoos. The tattoos are evidence of Plaintiffs acceptance of the tenets of  
 21 gang membership. The tattoos are therefore relevant to his membership in a gang,  
 22 such membership itself being probative of bias. FRE 401. This includes the "Fuck  
 23 Pigs" tattoo, which while not visible to the deputies, is a statement by decedent that  
 24 speaks to his relationship with law enforcement. To the extent plaintiffs argue that  
 25 decedent was always compliant with law enforcement, the "Fuck Pigs" tattoo is party  
 26 admission to the contrary and a clear statement against interest. FRE 801 (d)(2) and  
 27 FRE 804(b)(3). Moreover, the Supreme Court has held that evidence showing  
 28 membership in a prison gang is sufficiently probative of bias to warrant its admission

1 into evidence. *United States v. Abel*, 469 U.S. 45, 49 (1984).

2 Further, Gutierrez used a gun take-away and deployment technique commonly  
3 known among members of gangs and taught in jail. Decl. Dunkerly, ¶ 5. Only  
4 Swanson and Chevez can testify to the complete sequence of events because other  
5 witnesses to the struggle only saw disjointed portions of the incident and/or had their  
6 view blocked by a privacy curtain. Therefore, it is critical to counter any accusations  
7 against the deputies with a complete picture of who the decedent was, his opportunity  
8 to learn this particular gun take-away technique, and his bias.

9 **2. The tattoos are also relevant to the Plaintiffs' claim for compensatory**  
10 **damages.**

11 Insofar as the tattoos are indicative of gang membership, they are also relevant  
12 to Plaintiffs claims of loss of support. (TAC, p. 17). The fact that Gutierrez was  
13 involved in gangs is directly relevant to determining loss of support damages. FRE  
14 401. Illegal earnings cannot be used to calculate compensatory damages. Gutierrez'  
15 gang membership is relevant to the calculation of his future earnings, as this affected  
16 both his past employability, and would likely have affected his future employability.  
17 At the time of his death, Mr. Gutierrez had not held a job in several years. Lilliana  
18 Magallon, his girlfriend, the plaintiffs' guardian ad litem, testified to his gang  
19 membership. As such, the tattoos are relevant to his gang membership, which is in  
20 turn relevant to his financial contribution to the Plaintiffs.

21 **3. Plaintiffs have indicated they may reference decedent's tattoo so**  
22 **Defendants should be permitted to discuss the evidence and rebut**  
23 **Plaintiffs' assertions.**

24 Notably, Gutierrez also had a prominent tattoo on his chest that said "Fuck  
25 Pigs." In Plaintiffs' Motion in Limine No. 1, Plaintiffs indicate that they may verbally  
26 reference this tattoo as they claim that "it relates to the Defendants' motivation."  
27 Plaintiffs have intimated that they may suggest to the jury that the deputies saw this  
28 tattoo—even though no one at the hospital or the deputies has testified in deposition to

1 having seen it before the shooting—and in a fit of revenge decided to execute  
 2 Gutierrez in a public hospital with witnesses nearby. However, the deputies both  
 3 testified that they did not even see this tattoo, and in any event, they testified that they  
 4 are apathetic and unmoved by anti-police hate rhetoric because it is so common in  
 5 their line of work. Decl. Dunkerly, ¶ 4. To the extent that Plaintiffs will advance their  
 6 “execution” theory, Defendants should have an opportunity to address this evidence,  
 7 rebut any improper inferences, and show the jury the tattoo in question—so that the  
 8 jury can see that it was fully covered by decedent’s clothing.

### 9 III.

#### 10 **UNMODIFIED IMAGES DEPICTING BLOOD-SPATTER EVIDENCE AND** 11 **CONTUSIONS ARE PROBATIVE OF THE SEQUENCE OF EVENTS**

12 Defendants intend to produce photographs from the homicide report and  
 13 coroner’s autopsy at trial to establish that the blood spatter on decedent’s body is  
 14 consistent with the testimony of the deputies regarding the sequence of events which  
 15 resulted in his death. Defendants also intend to produce photographs depicting  
 16 contusions on the decedent’s body to establish that they are consistent with the  
 17 testimony of the deputies. Decl. Dunkerly, ¶ 6.

18 The decedent had *numerous* tattoos on his arms, forearms, chest, legs and back.  
 19 Some of those tattoos are gang-related and some are not. These tattoos are visible in  
 20 photographs of the blood spatter evidence and contusions on the decedent’s body.  
 21 Given the quantity and position of the decedent’s tattoos, it would not be possible to  
 22 alter the photographs to preserve the blood spatter evidence and contusions but erase  
 23 or otherwise redact the tattoos on decedent’s body. Therefore, images of the  
 24 decedent’s tattoos should be admitted as relevant to show the physical evidence in  
 25 support of the deputies’ testimony of the sequence of events.

26 ///

27 ///

## IV.

**GANG AFFILIATION IS NOT UNDULY PREJUDICIAL OR IMPROPER**  
**CHARACTER EVIDENCE**

To the extent that Plaintiffs' claim that evidence of Gutierrez' gang membership is prejudicial, it is more probative than prejudicial. Any misconception about the importance and weight of the gang evidence can be clarified by the Court with a limiting instruction to the jury regarding the purpose for which the evidence is being admitted. Plaintiffs' have not identified any unfair prejudice beyond stating that gang evidence would "inflame the passions of the jury". The decedent's tattoos are probative of bias, opportunity, and motive, as well relevant to the quantum of recoverable damages. FRE 401. The incident photographs depicting the decedent's tattoos are probative of the sequence and reconstruction of the incident. Therefore, the probative value of this evidence outweighs any unfair prejudice that may exist.

The tattoos and the inferences of gang membership are certain and not speculative. Lilliana Magallon, Gutierrez' girlfriend, the guardian ad litem in the present litigation, admitted in her deposition that he was a gang member. If the Plaintiffs would like to dispute the meaning of the tattoos, that goes to the weight of the evidence, not its admissibility.

Plaintiffs also argued that this evidence would be inadmissible hearsay, however no out of court statement has been offered for the truth of the matter asserted. Gutierrez's gang tattoos and membership are within the personal knowledge of his girlfriend, and are clearly visible in many of the images. Additionally Defendants' experts are able to identify those tattoos, and they may rely upon the images in forming their opinions.

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V.


**CONCLUSION**

Based upon the foregoing, Defendants respectfully requests this Court deny Plaintiffs' Motion *in Limine* No. 1 to exclude decedent's tattoos.

DATED: July 7, 2014

COLLINS COLLINS MUIR + STEWART LLP

By: \_\_\_\_\_



ERIN R. DUNKERLY  
TOMAS A. GUTERRES

CATHERINE M. MATHERS

Attorneys for Defendants, COUNTY OF  
LOS ANGELES, DEPUTY DAVID  
CHEVEZ and DEPUTY LAWRENCE  
SWANSON, JR.



**DECLARATION OF ERIN R. DUNKERLY, ESQ.**

I, Erin R. Dunkerly, declare:

1. I am an attorney admitted to practice before all the courts of the State of California. I am an associate in the law firm of Collins, Collins, Muir + Stewart, LLP, counsel of record for Defendants herein, County of Los Angeles, Deputy Lawrence Swanson, and Deputy David Chevez. The following facts and circumstances are personally known to me and if called upon to do so, I could and would competently testify as to them. As to those matters stated upon information and belief, I am informed and believe them to be true.

2. This declaration is provided in support of Defendants opposition to Plaintiffs' Motion in limine number one.

3. Attached hereto as Exhibit "A" is a true and correct copy of relevant portions of the deposition of LASD Deputy David Chevez, Vol. 2, which was taken on March 6, 2014.

4. Attached hereto as Exhibit "B" is a true and correct copy of relevant portions of the deposition of LASD Deputy Lawrence Swanson, Vol. 2, which was taken on March 19, 2014.

5. I am informed and believe that Gil Jurado, Defendants' police practices expert, is familiar with police training on gun take-away techniques including techniques taught by prison gangs and can testify regarding the techniques and the department's training on appropriate responses to these situations. He will be able to testify that Gutierrez used a gun take-away and deploy technique commonly known among gang members and taught in prison.

6. Defendants filed an Application to Seal the Homicide Photos and the Coroner Autopsy photos, which were submitted to the Court in support of the motion for partial summary judgment now pending and are identified as exhibits by defendants for trial. The photographs sought to be sealed are graphic in nature. The court can discern from those photographs that decedent had many tattoos on his arms,



**EXHIBIT "A"**

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UNITED STATES DISTRICT COURT  
  
CENTRAL DISTRICT OF CALIFORNIA  
  
  
  
N.G. AND L.G., minors, by and )  
through their Guardian ad Litem, )  
Lilliana Magallon; SARA PEREZ, )  
 )  
Plaintiffs, )  
 )  
vs. ) Case No.  
 ) CV13-008312-SVW  
COUNTY OF LOS ANGELES; LEROY ) (FFMx)  
BACA; DAVID CHEVEZ; LAURENCE )  
SWANSON,; and DOES 5-10, ) Volumes II and III  
 )  
Defendants. )  
\_\_\_\_\_ )

- NON-CONFIDENTIAL PORTION -

VIDEOTAPED DEPOSITION OF DAVID CHEVEZ

Los Angeles, California

Thursday, March 6, 2014

and

Friday, March 7, 2014

Reported by: Elena C. Chester  
CSR No. 10274  
NDS Job No.: 161107 and 161155

1 MR. CASSELMAN: And Gary Casselman,  
2 attorney for the plaintiffs and the video operator,  
3 pursuant to FRCP Rule 28. We may, later, be joined  
4 by someone else, but I'll make the announcement  
5 when that happens.

6 All right. So, sir, have you --

7 MR. OGBOGU: You need to swear him in  
8 again.

9 MR. CASSELMAN: Go ahead.

10

11

DAVID CHEVEZ,

12

having first been duly placed under oath, was

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examined and testified as follows:

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EXAMINATION (RESUMED)

16

BY MR. CASSELMAN:

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Q. Now, have you had a chance to discuss the

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incident or your testimony with your fellow deputy

19

and co-defendant, Mr. Swanson?

20

A. No, I have not.

21

Q. Okay. And have you talked to

22

Mr. Swanson, since yesterday, about this case?

23

A. Not about the case.

24

Q. I see. And how did you get here this

25

morning?

1 A. Yes, there is (sic).

2 Q. Did you see a big tattoo on his chest?

3 In block letters, it said "Fuck Cops."

4 A. I did not.

5 Q. If you saw a tattoo like that, would that  
6 upset you?

7 A. I see them all the time. I'm immune to  
8 it.

9 Q. But that's not responsive to my question.  
10 Actually, it says -- doesn't say "Fuck  
11 Cops," does it?

12 A. I don't know what it says.

13 Q. Well, it says "Fuck Pigs."

14 Does that upset you -- if people say  
15 "Fuck Pigs"?

16 A. Like I say, it does not. It doesn't  
17 bother me at all.

18 Q. And you are not allowed to respond to  
19 something like that, are you, according to your  
20 training?

21 A. That's definitely not professional -- if  
22 you do respond to it.

23 Q. Now, I want to ask you, before we, you  
24 know, go into the other aspect of this  
25 deposition -- now, have you seen -- by the way,

1 have you seen a tattoo like that before, that says  
2 "Fuck Pigs"?

3 A. Sir, I see them almost on a daily basis  
4 where I work.

5 Q. Does that -- does that, like, indicate  
6 membership in some kind of a group or just  
7 unhappiness with police?

8 MS. MATHERS: Objection. Lacks  
9 foundation.

10 But if you know.

11 THE DEPONENT: I really don't know. I  
12 would assume that the majority of the people that  
13 live in the community where we work are very  
14 unhappy with the police. They have an animosity  
15 towards us. It's very common.

16 Q. BY MR. CASSELMAN: Did you see any  
17 tattoos on Mr. Gutierrez before you shot him?

18 A. No.

19 Q. Did you see any tattoos on him after you  
20 shot him?

21 A. No.

22 Q. Did you have any tattoos, yourself,  
23 before you shot him?

24 A. No.

25 Q. And have -- besides the reaper tattoo on



**EXHIBIT "B"**

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UNITED STATES DISTRICT COURT  
  
CENTRAL DISTRICT OF CALIFORNIA  
  
  
  
N.G. AND L.G., minors, by )  
and through their Guardian )  
ad Litem, Lilliana Magallon; )  
SARA PEREZ, )  
 )  
Plaintiffs, )  
 )  
vs. ) Case No.  
 ) CV13-008312-SVW (FFMx)  
COUNTY OF LOS ANGELES; LEROY )  
BACA; DAVID CHEVEZ; LAURENCE ) Volume II  
SWANSON,; and DOES 5-10, )  
 )  
Defendants. )  
\_\_\_\_\_ )

VIDEOTAPED DEPOSITION OF LAWRENCE E. SWANSON, JR.  
  
Los Angeles, California  
  
Friday, March 7, 2014

Reported by: Elena C. Chester  
CSR No. 10274  
NDS Job No.: 161088

1                   LAWRENCE E. SWANSON, JR.,  
2                   having previously been duly placed under oath,  
3                   was examined and testified as follows:  
4

5                   EXAMINATION (RESUMED)

6                   BY MR. CASSELMAN:

7                   Q.     Thank you. I think we've covered the  
8                   preliminaries yesterday. Is there anything that  
9                   you want to change or modify or withdraw, in terms  
10                  of your prior testimony?

11                  A.     No.

12                  Q.     Very well. Is there any reason that you  
13                  think we could not go forward? Because you are not  
14                  feeling well or there is some other condition  
15                  that's affecting you.

16                  A.     No.

17                  Q.     All right. Now, did you write any  
18                  reports about the incident, yourself?

19                  A.     No, I didn't.

20                  Q.     Did your partner, to your knowledge?

21                  A.     Not to my knowledge.

22                  Q.     And did you go out in the field with  
23                  Mr. Chevez after the date of the incident?

24                         MS. MATHERS: Objection. Vague.

25                         MR. CASSELMAN: All right.

1 A. Yes.

2 Q. And he never said anything, in anger or  
3 otherwise?

4 A. I vaguely remember, after he had jumped  
5 off the bed --

6 Excuse me. Can I get some water?

7 Q. Of course.

8 A. When he jumped off of the bed -- and he  
9 yanked on that -- that railing that was handcuffed  
10 (sic) -- I vaguely remember him yelling  
11 something -- some type of curse word, but I don't  
12 recall exactly the words used. That was the only  
13 time.

14 Q. Does that appear in any statement that  
15 you've given in this matter: that he yelled  
16 something?

17 A. I believe so.

18 Q. And -- now, when -- let me back up.

19 Did you watch the -- the person that came  
20 in to give Mr. Gutierrez an EKG -- that would be  
21 someone doing something like you used to do;  
22 right?

23 A. Correct.

24 Q. And so that EKG tech -- were you watching  
25 what he was doing, out of curiosity as well as

1 professional interest?

2 A. No.

3 Q. All right. (Unintelligible.)

4 (Reporter's request for clarification.)

5 Q. Why were you watching?

6 A. (No audible response.)

7 (Conference held, off the record, between

8 Mr. Casselman and Mr. Ogbogu.)

9 Q. BY MR. CASSELMAN: Now, did you come into  
10 the room at some point in time before the EKG tech  
11 left?

12 A. Not that I recall.

13 Q. Did you ever see any involvement of  
14 Mr. Gutierrez and the EKG tech?

15 A. Not that I recall.

16 Q. Now, if a person was wearing a T-shirt,  
17 how would you, as a trained EKG tech, attach the  
18 electrodes to that person?

19 A. I would put it -- electrodes on each arm,  
20 each leg or the lower hip and then put the  
21 electrodes on the chest, around the left breast and  
22 to the midaxillary line, which would be the middle  
23 of the armpit line (indicating).

24 Q. And you would attach those electrodes to  
25 the skin; correct?

1 Q. Was there some way you decided who would  
2 stay and who would go?

3 A. Not that I recall.

4 Q. And did you walk inside and see  
5 Mr. Gutierrez with electrodes on his chest?

6 A. I don't recall seeing any electrodes on  
7 his chest.

8 Q. Would you believe that the events were  
9 fresher in your mind when you gave the statement to  
10 the investigators from your Department than they  
11 would be now, since there's been a passage of a  
12 significant amount of time?

13 A. I believe so.

14 Q. Okay. And so, if --

15 Referring Counsel to -- do you have the  
16 transcript? No?

17 Well, in any event, if you said:  
18 "... then I walked inside, and my partner had -- I  
19 noticed he had handcuffed the inmate with both  
20 hands, and the inmate had electrodes, like,  
21 those -- those stickers they use for EKGs. He had  
22 electrodes on his chest," would -- do you recall  
23 saying that?

24 A. Vaguely, yeah.

25 Q. Would you like to review the certified

1 page, too, if you like, to satisfy yourself.

2 MS. MATHERS: No. I just want a copy of  
3 the certified transcript. That's all.

4 MR. CASSELMAN: Right.

5 (Brief pause in proceedings.)

6 MS. MATHERS: Okay.

7 Q. BY MR. CASSELMAN: All right. Having  
8 reviewed that, sir, does that appear to be an  
9 accurate record of what you said? I mean, we can  
10 play the audio, but I'll represent to you that we  
11 had a reporter, certified reporter, who has no  
12 interest in this case, transcribe this.

13 MS. MATHERS: Well, I don't want him  
14 attesting to the authenticity of the transcript  
15 until he's had an opportunity to review the entire  
16 transcript and the recording.

17 MR. CASSELMAN: I'm just talking about  
18 that statement.

19 MS. MATHERS: If he recalls that being  
20 what he's said, that's fine. Otherwise, we can  
21 check the recording to the transcript later.

22 Q. BY MR. CASSELMAN: Well, let me ask you  
23 this, sir, at this time. Having read that, does  
24 that refresh your recollection of what you saw in  
25 the room -- of Mr. Gutierrez with electrodes on his



1 chest, as reported, and with being handcuffed, both  
2 hands, to the bed?

3 A. I do recall the -- both handcuffs being  
4 handcuffed to the bed. I do remember seeing  
5 stickers. I remember seeing a sticker -- I thought  
6 it was on his arm. I'm sorry. Electrode. And as  
7 far as the chest, I don't recall, but -- yeah, I  
8 don't recall.

9 Q. But if you gave the statement closer in  
10 time, would it be fair to say that you probably had  
11 a better recollection on October 18, 2012, than you  
12 do on March 7, 2014?

13 A. Yes.

14 Q. All right. And when you did observe --  
15 do you have any current recollection of seeing  
16 Mr. Gutierrez with electrodes on him?

17 A. Just what I just told you.

18 Q. And was Mr. Gutierrez saying or doing  
19 anything when you made that observation of him?

20 A. No.

21 Q. All right. So it's not like he was  
22 struggling against his restraints?

23 A. No.

24 Q. He was just laying there?

25 A. Yes.

1 time.)

2 Q. BY MR. CASSELMAN: Would it be above or  
3 below the nipple line?

4 A. Both.

5 Q. And how many stickers would there be on  
6 the chest area?

7 A. Typically, during an EKG tech -- test,  
8 there would be four, five, six, seven, eight,  
9 nine -- 10? Approximately 10.

10 Q. And that's in addition to the ones on the  
11 limbs?

12 A. No. That includes the limbs.

13 Q. All right. Well, I'm asking just about  
14 the chest.

15 A. So then it would be six.

16 Q. All right. A moment please.

17 Did you see any part of Mr. Gutierrez's  
18 torso?

19 A. Not that I can recall.

20 Q. I'm going to show you -- I'm going to  
21 show you what's been marked as County of L.A. 0338.

22 Showing your counsel first.

23 Are you familiar with that photograph?

24 A. No, sir.

25 Q. Are you familiar with what it depicts?

1 A. I can assume what it depicts.

2 Q. Well, I don't want you to assume  
3 anything. Are you saying that you've never seen  
4 any view of that torso before?

5 A. No, sir.

6 Q. And --

7 MS. MATHERS: I think you asked a double  
8 negative there.

9 MR. CASSELMAN: All right.

10 Q. Have you ever seen that body -- that  
11 person's body before?

12 A. It doesn't look familiar, sir.

13 Q. And have you ever seen any tattoos like  
14 that on the date of the incident?

15 A. Not that I recall.

16 Q. Well, let me ask you, sir, how would it  
17 be possible to -- I want you to assume that that's  
18 Mr. Gutierrez, and that these pictures were taken  
19 by your Department --

20 A. Uh-huh.

21 Q. -- after he was killed.

22 Can you tell me -- and actually, take a  
23 pen and mark where, as an EKG tech, you would  
24 attach electrodes -- or where they would routinely  
25 be attached -- to the chest area of that torso.

1 above that?

2 How would you see those electrodes  
3 without seeing the tattoo?

4 A. I could see those electrodes without  
5 seeing that tattoo by the shirt collar -- the line  
6 that comes down. In fact, if was common practice  
7 where we would -- in the emergency room, where  
8 people would come in still wearing their normal  
9 clothes -- that we would actually put these first  
10 two without raising their shirt, just to provide  
11 extra privacy -- in those first two positions. And  
12 then, because a lot of people feel uncomfortable  
13 about showing their nipple line, we would lift the  
14 shirt up here (indicating) to place the rest of the  
15 ones while keeping their nipples covered to allow  
16 privacy for the patient.

17 So I can see the two in the chest,  
18 commonly, by the shirt line -- the collar line  
19 coming down. And then -- so that's how I would be  
20 able to see electrodes on the chest without  
21 actually seeing this tattoo (indicating).

22 MR. CASSELMAN: Indicating the "Fuck  
23 Pigs" tattoo.

24 Q. So the shirt would have to be lifted to  
25 place the Electrodes 3, 4, and 5, as we've

1 described them?

2 MS. MATHERS: Do you want him to number  
3 it on the page, so we have a number of what's 1, 2,  
4 3, 4 and 5?

5 MR. CASSELMAN: Well, I made a record  
6 that we start from the left side of the picture --  
7 and the right side, just to the right of the  
8 decedent's sternum, and then we move  
9 clockwise to --

10 MS. MATHERS: I was just asking if you  
11 wanted him to write it on the page. Doesn't matter  
12 to me whether you do or don't.

13 MR. CASSELMAN: No. No, I don't.

14 MS. MATHERS: Okay.

15 Q. BY MR. CASSELMAN: So it's your testimony  
16 that the -- do you recall what position the shirt  
17 was in, or if it was even on his body?

18 A. I don't ever recall him taking his shirt  
19 off. I recall the shirt being on the entire  
20 time.

21 Q. Right. Well, if he was handcuffed, he  
22 wouldn't be able to do any removal of his own  
23 shirt, would he?

24 A. I don't believe so. No.

25 Q. And do you recall if -- do you recall if

1 he had a T-shirt on when you saw the electrodes?

2 Or you don't remember one way or the other?

3 A. I still can't recall.

4 Q. All right. Well, do you think, if you  
5 saw a big tattoo with that "Fuck Pigs" on it, that  
6 you'd remember it now?

7 A. Yes, I do.

8 Q. And what else does it say or depict that  
9 you can recognize from viewing it?

10 A. You want me to just tell you what tattoos  
11 I see on here?

12 Q. Yes, sir.

13 A. I see "South Side." I see a horned  
14 creature. I see a "Fuck Pigs." And I see what  
15 looks like "Tiny" -- "Tiny" -- something. A word  
16 that starts with G-e.

17 Q. And it's your testimony that you saw none  
18 of that prior to looking at this picture?

19 A. Correct. None of these look familiar to  
20 me at this time.

21 Q. Do you have any reason to believe that at  
22 an earlier time, you had seen that and you just  
23 forgot?

24 A. No, not that I recall -- seeing that.

25 MR. CASSELMAN: I need a moment off the

1 STATE OF CALIFORNIA )  
 ) ss:  
2 COUNTY OF LOS ANGELES )  
3

4 I, ELENA C. CHESTER, do hereby certify:

5 That I am a duly qualified Certified Shorthand  
6 Reporter, in and for the State of California, holder of  
7 certificate number 10274, which is in full force and  
8 effect and that I am authorized to administer oaths and  
9 affirmations;

10 That the foregoing deposition testimony of the  
11 herein named witness was taken before me at the time and  
12 place herein set forth;

13 That prior to being examined, the witness named  
14 in the foregoing deposition, was duly sworn or affirmed  
15 by me, to testify the truth, the whole truth, and  
16 nothing but the truth;

17 That the testimony of the witness and all  
18 objections made at the time of the examination were  
19 recorded stenographically by me, and were thereafter  
20 transcribed under my direction and supervision;

21 That the foregoing pages contain a full, true  
22 and accurate record of the proceedings and testimony to  
23 the best of my skill and ability;

24 That prior to the completion of the foregoing  
25 deposition, review of the transcript was requested.



1 I further certify that I am not a relative or  
2 employee or attorney or counsel of any of the parties,  
3 nor am I a relative or employee of such attorney or  
4 counsel, nor am I financially interested in the outcome  
5 of this action.

6  
7 IN WITNESS WHEREOF, I have subscribed my name  
8 this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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11 \_\_\_\_\_  
12 ELENA C. CHESTER, CSR No. 10274  
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